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Why checking off the wrong box can bar you from Canada for 2 years

Our Columnist - Untangling The Law
Written by Reis Pagtakhan

What does it mean to misrepresent yourself on your immigration application? According to Citizenship and Immigration Canada, a misrepresentation occurs "when a person makes false statements, submits false information, or submits false or altered documents"

It is important to note that, though not all cases of misrepresentation involve an individual intentionally withholding or leaving out information, it is always the responsibility of the individual making an application to make sure that all questions are answered honestly and truthfully. The importance of double-checking your immigration application is seen in the September 2013 case of Goburdhun v. Canada (Citizenship and Immigration).

In this case, Mr. Goburdhun had applied for and was refused a temporary resident visa by Citizenship and Immigration Canada in 2011. Mr. Goburdhun then applied and was issued a work permit in 2012 which was valid for 2 years.

After applying for his work permit in 2012, Mr. Goburdhun reapplied for the second time for a temporary resident visa, and when answering the question "Have you ever been refused any kind of visa, admission, or been ordered to leave Canada or any other country?", checked the "no" answer checkbox. He did not disclose being refused a temporary resident visa in 2011.

The Immigration Officer who was reviewing his second temporary resident visa application refused it on the basis of misrepresentation. As a result, Mr. Goburdhun was barred from Canada for 2 years.

Before refusing the application, the Officer wrote to Mr. Goburdhun and gave him an opportunity to explain what happened. Mr. Goburdhun said that a clerical error was made by the immigration consultant who helped with his application and that it was not an intentional mistake. Although Goburdhun indicated that he did not fill out the application form himself, it was his responsibility to ensure that the answers were correct.

The Immigration and Refugee Protection Act (IRPA) indicates that "...a foreign national is inadmissible for misrepresentation for directly or indirectly misrepresenting or withholding material facts relating to a relevant matter that ... could induce an error in the administration of this Act". Before deciding on whether there is a misrepresentation, the following principles must be considered:

- Misrepresentations made by an immigration consultant, with or without the applicant's knowledge, is still a misrepresentation;
- An exception to this can occur only when the applicant honestly and reasonably believes that the facts presented in their application are true;
- In order to deter individuals from misrepresenting themselves on their applications, the onus is always placed on the individual making application;
- Although an applicant may have hired another individual to fill in their application form, the applicant is the one who is ultimately signing their name on the form, confirming the information contained within to be true. Therefore, claiming that a clerical error is the reason for the misrepresentation is still a misrepresentation ; and
- An applicant cannot use to their advantage the fact that a misrepresentation may not be caught on the initial review of their application – the analysis of materiality is not limited to a specific time period of the review process.

When Mr. Goburdhun denied having been refused a temporary resident visa the previous year, all that the Immigration Officer needed to do was check his immigration history in order to see that he had been refused. Although the information is already available on the Officer's computer, questions about previous immigration history still appear on immigration applications.

Because the officer had information on his past history, Mr. Goburdhun tried to argue that the incorrect answer was "immaterial"; essentially, he was saying that if Citizenship and Immigration Canada already knew the answer, then the clerical error should not matter. The reality of the situation is quite the contrary. Mr. Goburdhun's lack of diligence in ensuring the accuracy of his own application was the problem. Whether Citizenship and Immigration Canada had this information on its files did not take away from the fact that this was a misrepresentation.

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